

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

THOMAS ARMISTEAD PHILLIPS,)
)
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Plaintiff,)
)
)
v.) CIVIL ACTION 23-0140-WS-MU
)
)
UNITED STATES OF AMERICA, et al.,)
)
)
Defendants.)
)

ORDER

The plaintiff has filed a motion for leave to amend the complaint. (Doc. 41). The private defendant (“EOM”) objects on the sole grounds of futility. (Doc. 45).

“The futility threshold is akin to that for a motion to dismiss” *Bill Salter Advertising, Inc. v. City of Brewton*, 2007 WL 24099819 at *2 (S.D. Ala. 2007). The Court’s practice is to grant leave to amend when the opponent’s futility argument amounts effectively to a detailed motion to dismiss, leaving it to the opponent to then file a motion to dismiss the amended pleading. *E.g., Sullivan v. Wells Fargo Bank, N.A.*, 418 F. Supp. 3d 939, 942 (S.D. Ala. 2019); *Howard v. Bayrock Mortgage Corp.*, 2010 WL 2734649 at *1 (S.D. Ala. 2010). EOM’s objection falls in this category.

Accordingly, the motion for leave to amend is **granted**. The plaintiff is **ordered** to file and serve his amended complaint on or before **December 14, 2023**. EOM’s pending motion for judgment on the pleadings, (Doc. 33), which is directed to the original complaint, is **denied as moot**.

DONE and ORDERED this 7th day of December, 2023.

s/ WILLIAM H. STEELE
UNITED STATES DISTRICT JUDGE